

Matthew W. Morrison
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044
(202) 514-3932

LODGED

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PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

William W. Mercer
United States Attorney
District of Montana

Kris McLean
Assistant United States Attorney
District of Montana
First Floor
100 North Park Avenue
Helena, Montana 59601

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY

Defendants.

Civil Action No. CV-89-39-SEH

THIRD AMENDED COMPLAINT

The United States of America, by and through its undersigned attorneys, by the authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (hereafter "EPA"), alleges as follows:

I. STATEMENT OF THE CASE

1. This is a civil action brought by the United States under Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607, 9613(g)(2), for reimbursement of all costs of removal or remedial action ("response costs") incurred by the United States in connection with

the Anaconda Smelter Site, the Milltown Reservoir Sediments Site, the original portion of Silver Bow Creek/Butte Area Site, and the Butte Priority Soils Operable Unit, and for declaratory judgment that defendants are liable for reimbursement of all future response costs incurred by the United States in connection with these areas.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. §§ 1331, 1345, and 2201.

3. Venue is proper in the District of Montana pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. §§ 1391(b) and (c) because the releases of hazardous substances occurred within this judicial district.

III. DEFENDANTS

4. Defendant Atlantic Richfield Company ("ARCO") is a corporation currently organized under the laws of the State of Delaware with its corporate headquarters in Los Angeles, California, and is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

5. Defendant Cleveland Wrecking Company, Inc. ("Cleveland Wrecking") is a corporation organized under the laws of Delaware with its corporate headquarters located in Los Angeles, California, and is a "person" within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

IV. GENERAL ALLEGATIONS

A. The Facilities and Releases of Hazardous Substances

6. During the latter part of the nineteenth century, the area in and around Butte, Montana was recognized as one of the major mining centers of the world. To develop the rich deposits of minerals located there, particularly copper and silver, hundreds of mines were opened and worked. In order to concentrate and further smelt and refine the mined ore, various entities constructed smelters, mills, and concentrators in and around Butte along the banks of

Silver Bow Creek and constructed impoundments for the storage of beneficiation and processing wastes along the banks of Silver Bow Creek, which runs through Butte and thereafter joins with Warm Springs Creek and other surface waters to form the Clark Fork River.

7. Among the major smelters operated in and around Butte adjacent to Silver Bow Creek were the Colorado Smelter, which commenced operations in or around 1879; the Parrott Smelter, which commenced operations in or around 1881; the Butte and Boston Smelter, which commenced operations in or around 1889; the Montana Ore Purchasing Company Smelter, which commenced operations in or around 1893; and the Butte Reduction Works, which commence operations in or around 1883. Other mines, mills, smelters, and concentrators, including the Berkeley Pit, also operated in Butte from 1860 to the present.

8. In or around 1884, large copper concentrating and smelting operations commenced at the site of the "Old Works" smelter located on the north side of Warm Springs Creek near Anaconda, Montana and continued there until approximately 1901. During these operations large quantities of ore beneficiation, processing, and other wastes, including tailings, slag, and flue dust of various compositions, were disposed of into the air, onto the surface soil, and into the surface waters. The buildings comprising the Old Works were demolished decades ago, but large volumes of the wastes, including tailings, slags, and flue dust, from operations at the Old Works remain.

9. In or around 1902, ore beneficiation and processing operations began at the "New Works" (also called the "Anaconda Smelter," the "Washoe Smelter," the "Washoe Reduction Works," and the "Anaconda Reduction Works") in the Smelter Hill area located east of Anaconda and south of Warm Springs Creek. Smelting and other ore beneficiation and processing operations were carried on in various structures in this area of the site until this facility was closed in approximately 1980. Large volumes of waste were created by activities at the New Works during its operation, including but not limited to particulates emitted into the air

and tailings, slag, and flue dust deposited onto the surface soil at the site. Large volumes of waste from operations of the smelter remain.

10. After the "New Works" smelter ceased operations in 1980, the buildings and associated machinery and appurtenances in the Smelter Hill complex were demolished and salvaged pursuant to a contractual arrangement between ARCO and Defendant Cleveland Wrecking Company. Cleveland Wrecking transported and disposed of hazardous substances at the Anaconda Smelter Site under this arrangement. Demolition operations commenced in approximately September, 1982 and continued to approximately June 27, 1986.

11. The waste materials resulting from these ore extraction, beneficiation, and processing operations were carried on in and around Anaconda and Butte, as well as from the demolition operations in Anaconda. These waste materials contain hazardous substances, including, but not limited to, lead, arsenic, copper, chromium, barium, cadmium, zinc, and manganese. These hazardous substances were released for many years, and continue to be released into the environment, including, without limitation: (1) the air and soils in and around Anaconda and Butte, (2) the waters, beds, banks, shorelines, and floodplains of the Silver Bow Creek, the Warm Springs Creek, the Warm Springs Ponds, the Clark Fork River, the Milltown Reservoir, and other bodies of surface water which are tributary to the Clark Fork River, and (3) the groundwater aquifers under these soils and surface waters.

B. EPA Activities Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

12. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA listed the Anaconda Smelter Site on the National Priorities List ("NPL") on September 8, 1983 (48 Fed. Reg. 40658). This Site includes, but is not limited to, the actual site of the Anaconda Copper Smelter and associated real property and buildings (this area is commonly called the "Smelter Hill Complex"), the "Old Works," the Anaconda Tailings Ponds, the Opportunity Tailings Ponds, the Slag Pile, the Flue Dust Storage Facility southeast of the smelter facilities, the Arbiter Works, the unincorporated former community of Mill Creek evacuated in the early 1980's, several

smaller waste impoundments, and several square miles of soil contaminated by arsenic and various heavy metals as a result of past emissions from the smelters. Warm Springs Creek and Mill Creek roughly bound the Smelter site on the north and south sides, respectively, joining Silver Bow Creek to form the Clark Fork River at a location roughly adjacent to the eastern boundary of the site.

13. The Silver Bow Creek/Butte Area Site is located in Silver Bow County and Deer Lodge County in southwestern Montana, and presently includes, without limitation, large areas in and around Butte, Montana affected by past mining, milling, and smelting activities, as well as the water, banks, bed, and floodplain of Silver Bow Creek. Pursuant to Section 105 of CERCLA, EPA listed the original Silver Bow Creek ("SBCO") Site on the NPL on September 3, 1983 (48 Fed. Reg. 4065). As originally listed, the SBCO Site began at the headwaters of the Silver Bow Creek, proceeded down to Warm Springs Ponds, and continued down the Clark Fork River to the Milltown Reservoir. In 1987, the SBCO NPL listing was amended to include large areas in and around Butte on July 22, 1987, 52 Fed. Reg. 27627, and became known as the Silver Bow Creek/Butte Area Site. In February, 1990, the Clark Fork River portion of the Silver Bow Creek/Butte Area Site was transferred to the Milltown Sediments Site, described in Paragraph 15, *infra*.

14. One of the areas in Butte added to the SBCO Site in 1987 was the Butte Priority Soils Operable Unit ("BPSOU"). The BPSOU consists of former ore extraction, process and beneficiation facilities and their associated wastes including waste rock dumps, mill wastes, tailings deposits, smelter fallout and slag, and other wastes associated with metals recovery, as well as soils and alluvial groundwater contaminated by these materials. The BPSOU mine wastes were used as fill material to level building sites, as base material for roads and parking areas, as ballast to construct railroad beds, and for other miscellaneous uses throughout the BPSOU. These facilities are distributed throughout the BPSOU often in, or, in close proximity

to, residential areas. The BPSOU is also contaminated by airborne contaminants from the various Anaconda Smelter facilities.

15. Pursuant to Section 105 of CERCLA, EPA listed the Milltown Reservoir Sediments Site on the NPL on September 8, 1983 (48 Fed. Reg. 40658). As listed, the Milltown Reservoir Sediments Site included the Milltown Reservoir and the lands adjacent thereto under which the Missoula aquifer flows, including a plume of contamination in groundwater. The Milltown Reservoir was created by the construction in 1906 of the Milltown Dam, approximately 100 miles from Anaconda. Millions of cubic yards of sediment have accumulated on the bottom of the reservoir. In February 1990, the Clark Fork River was added to the Milltown Reservoir Sediments Site from the Silver Bow Creek/Butte Area Site.

16. EPA has incurred and will incur response costs at the Anaconda Smelter Site, the Milltown Reservoir Site, the SBCO Site, and the BPSOU.

V. CLAIM FOR RELIEF

CERCLA Section 107

17. The allegations set forth in paragraphs 1 through 16, inclusive, are realleged and incorporated herein by reference.

18. Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), authorizes the President to take the necessary response action to determine the existence and extent of releases or threatened releases of hazardous substances, pollutants, or contaminants; to take action to remove or remedy such releases in order to protect public health and the environment; and to recover the costs of these actions. CERCLA further authorizes the President to expend monies to undertake planning, legal, economic, engineering, and other studies or investigations to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of CERCLA. The President has delegated his authority under Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b) to the Administrator of EPA. This authority has been redelegated by the Administrator of EPA to the Regional Administrator of EPA for Region VIII.

19. "Hazardous substance" is defined in Section 101(14) of CERCLA, 42 U.S.C.

§ 9601(14), to include:

(A) any substance designated pursuant to section 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C), any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. § 6921, et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of the title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. § 9412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 2606 of title 15.

20. "Release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22),

to include:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment

21. "Facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), to

include:

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

22. The ore beneficiation and processing establishments in Anaconda and Butte discussed in Section IV.A. and B. of this Amended Complaint are "facilities" within the meaning of 42 U.S.C. § 9601(9).

23. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been and are being released, or pose a threat of being released, into the environment, including the soils, surface waters, and groundwaters of the Anaconda Smelter Site, and the SBCO Site, the BPSOU Site, and the Milltown Reservoir Site from the facilities referenced in the preceding paragraph.

24. The United States has incurred and will continue to incur response costs to respond to these releases or threatened releases. These costs include, but are not limited to, costs incurred and to be incurred for removal and remedial actions, for planning, legal, or other activities necessary or appropriate to plan, direct, and support response actions, for recovery of the costs of response actions, and for enforcement purposes.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel (otherwise subject to the jurisdiction of the United States) or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the National Contingency Plan

26. Defendant ARCO is a person who, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), owns or operates such facilities.

27. Defendant ARCO is a person who, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), owned or operated such facilities, within the meaning of

Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), at the time of disposal of hazardous substances at such facilities.

28. Defendant ARCO is liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs, including but not limited to costs of investigation, remedial action, removal action, oversight, and enforcement, incurred and to be incurred by the United States in connection with responses to releases of hazardous substances at the Milltown Reservoir Site, the Anaconda Smelter Site, the SBCO Site, and the BPSOU.

29. Defendant Cleveland Wrecking is a person who, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), owned or operated a facility or facilities within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), at the time of disposal of hazardous substances at such facilities.

30. Defendant Cleveland Wrecking is a person who, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), arranged for the disposal or treatment of hazardous substances owned or possessed by Cleveland Wrecking at facilities, within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), owned or operated by other parties.

31. Defendant Cleveland Wrecking is a person who, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), accepted waste materials containing hazardous substances for transport to areas within the Anaconda Smelter Site, which areas Cleveland Wrecking selected.

32. Defendant Cleveland Wrecking is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for costs incurred by EPA in connection with the Anaconda Smelter Site.

VI. PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that this Court:

1. Enter judgment against Defendant Atlantic Richfield Company in favor of the United States for all response costs, including but not limited to costs of investigation, removal and remedial action, oversight, and enforcement, incurred by the United States for response activities related to the Anaconda Smelter Site, the Milltown Reservoir Site, the SBCO Site, and the BPSOU;
2. Enter a declaratory judgment against Defendant Atlantic Richfield Company in favor of the United States for all future response costs, including but not limited to costs of investigation, removal and remedial action, oversight, and enforcement, to be incurred by the United States for response activities related to the Anaconda Smelter Site, the Milltown Reservoir Site, the SBCO Site, and the BPSOU;
3. Enter judgment against Defendant Cleveland Wrecking Company, Inc., in favor of the United States for costs, including but not limited to costs of investigation and enforcement, incurred by the United States in connection with certain response activities related to the Anaconda Smelter Site;
4. Enter a declaratory judgment against Defendant Cleveland Wrecking Company, Inc., in favor of the United States for future response costs, including but not limited to costs of investigation, removal and remedial action, oversight, and enforcement, to be incurred by the United States for certain response activities related to the Anaconda Smelter Site;
5. Award the United States its costs of suit herein; and

6. Grant such other relief as is deemed appropriate.

Respectfully submitted,

~~JOHN C. CRUDEN~~
Deputy Assistant Attorney General
Environment and Natural Resources Division

~~MATTHEW W. MORRISON~~
Senior Counsel
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

WILLIAM W. MERCER
United States Attorney
District of Montana

~~Kris McLean~~
Assistant United States Attorney
District of Montana
First Floor
100 North Park Avenue
Helena, Montana 59601

OF COUNSEL:

D. HENRY ELSEN
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region VIII
10 West 15th Street, Suite 3200
Helena, Montana 59626